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U.S. Citizenship
and Immigration
Services

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BS

FILE: EAC 03 020 54063 Office: VERMONT SERVICE CENTER Date: AUG 24 2005

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maui Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a senior programmer analyst at Corning Incorporated. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes her past and present work:

I work in the Environmental Products division of Corning Incorporated, a world-leading supplier of catalytic converter substrates, the key parts used to reduce pollution from mobile and stationary sources. . . .

As a senior programmer analyst, my assignments here are working on the frontline of computer software developments and applications and delivering cutting-edge IT knowledge to the new product lines, including the following duties:

- Initiate, lead and coordinate various projects as project leader to create and develop the whole IT system for new production lines;
- Maintain and support IT systems for all the production areas . . . ;
- Create and develop the GUI (graphical user interface) applications on the production . . . ;
- Design the logical and physical data structures/models;
- Setup, administrate and maintain the relational database management system . . . ;
- Setup and maintain the Allen Bradley control systems;
- Configure the hardware setup and IT Infrastructure system including Ethernet and Data Highway+;
- Establish and develop the web report system and web applications using ASP, HTML and XML. . . .

I firmly believe that my talents in the information technology field can contribute a tremendous amount to the United States and her people. . . .

Corning Incorporated [has initiated] a project which develops the ultra-thin-wall substrate . . . to help vehicle manufacturers produce the newest generation of ultra-low emission vehicles. . . . I played a critical role on this project as IT project leader, because without my work – the whole IT system would have no data and no information for the scientists and engineers to analyze the performance of the products. . . .

Furthermore, my work releases American workers from manual data processing, since the ware/piece tracking system, defect tracking system I established on the lines provides the

computer-based information processing which free[s] the workers from the boring and repeated paperwork. . . .

[M]y work is to provide better information processing and management, thus to help efficient running of the American companies, and also my work will improve the leadership and competitiveness of American businesses. . . .

On my master project [at] Rochester Institute of Technology, I created an on-line educational software "Teaching Tool for Computer graphics." This e-learning software provides free access . . . from anywhere through [the] internet; and creates a virtual learning/mentor environment. . . .

Another project I have done [at] Corning Incorporated is to create easy-to-use human-machine interface and high automation which make education and training of workers easier and more convenient and help them learn how to operate high-technology machines.

The petitioner submits several witness letters in support of the petition. A four-sentence letter from Representative Amo Houghton urges "every consideration" for the petition, but adds little of substance to the record, despite the petitioner's suggestion that this letter amounts to government endorsement of the petition.

Several of the letters are from faculty members of Rochester Institute of Technology (RIT), where the petitioner earned her master's degree. Professor [REDACTED] states:

[The petitioner] created interactive graphics teaching tools to help children, high school and college students, and others interested in computer graphics understand the concepts of polygon clipping and two dimensional transformations. That tool has many functions for both teachers and students. . . . Since it is an on-line teaching tool which provides a new strategy on educational and professional arenas, the impact on improving the educational and training programs is significant.

Professor [REDACTED] states: "My students still use [the petitioner's] project today. . . . The ability to produce this kind of work serves to significantly improve educational and training programs, and her work is freely accessible to anyone." Beyond RIT, the petitioner submits a copy of an electronic mail message that she received from Al Byers, director of the National Science Teachers Association Institute, who indicates that the petitioner's program "is a valuable applet for high school teachers and students" and "[v]ery impressive." These comments show that the petitioner created a useful program as part of her master's project, but they do not demonstrate that the petitioner's work has had a discernible effect on education at a national level. Simply developing a useful and worthwhile computer program is not, by itself, grounds for a national interest waiver; developing such programs is a basic job duty of programmer analysts who, generally, are subject to the statutory job offer requirement.

Regarding her current work, the petitioner submits letters from several individuals at [REDACTED] Incorporated. [REDACTED] the company's Ultra Thinwall Project manager, states that the petitioner's "work has benefited the manufacturing technology of two plants producing this product, [and therefore] she has [made] a direct contribution to improving the air quality of the Unite[d] States." The record contains no objective documentation showing that the petitioner's work has measurably reduced pollution or improved air quality at a national level. We note that the petitioner is not responsible for the design or manufacture of the products themselves, and there is no reason to believe that these products would function any differently if another